

UNITED STATES OF AMERICA
UNITES STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT Z-1174 699-D1
Issued to: Charles WATSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2193

Charles WATSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 22 August 1978, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that Appellant, while serving as Steward Utility aboard SS TEXACO CONNECTICUT under authority of the document above captioned did, on or about 12 May 1978, while the vessel was moored at Sun Oil Company Terminal, Nederland, Texas, wrongfully commit an assault and battery with a broken disk on a union patrolman, Reginald L. Harrison.

The hearing was held at Port Arthur, Texas, on 26 June and 1 August 1978.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence four exhibits consisting of (1) Affidavit of service and Recitation of Rights; (2) abstracts of the shipping articles of the SS TEXACO CONNECTICUT; (3) photographs of Harrison's face taken the day of the incident; and (4) photo of a broken disk used in the assault. He also produced two witnesses, Harrison and the local Shipping Commissioner.

In defense, Appellant offered in evidence two exhibits consisting of (1) U.S. Public Health Service documents showing treatment for bruises or strain of his arm following the incident; and (2) the deposition of AB Threet.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant revoking all documents issued to Appellant.

The entire decision was served on 25 August 1978. Appeal was timely filed on 22 August 1978 and perfected on 12 December 1978.

FINDINGS OF FACT

On 12 May 1978, Appellant was serving as Steward Utility on board SS TEXACO CONNECTICUT and acting under authority of his document while the vessel was in the port of Port Arthur, Texas. Appellant, as deck department delegate on the vessel, listened to a discussion between a crew member and Reginald L. Harrison, a union patrolman. Appellant intervened and an argument ensued. Appellant and Harrison exchanged abusive and derogatory language which resulted in Appellant's striking Harrison. Appellant then went into the pantry. Harrison entered the pantry and the argument began again. Appellant then broke a disk and struck Harrison in the face, with several serious lacerations resulting.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that (1) the evidence does not support a finding of assault and battery; (2) that the finding that the plate used was a dangerous weapon was erroneous; and (3) that the revocation of Appellant's documents was too severe and unwarranted by the circumstances.

APPEARANCE: W. Don Bush, of the Law Offices of Jas. W. Mehaffy, Jr., Beaumont, Texas.

OPINION

At the outset it should be noted that the record consists largely of somewhat confusing testimony by witnesses whose recollections are unclear at best. In a case such as this, it is peculiarly the Administrative Law Judge's function to assess the conflicting testimony of witnesses and evaluate their credibility. Accordingly, a review of his decision". . . is limited to a determination of whether a reasonable man could reach the ultimate decision of the Judge on the same evidence." Decision on Appeal No. 2019. The record contains substantial evidence of a reliable and probative character that supports the findings, and therefore they will be affirmed.

Appellant also contends that the finding that a broken plate is a dangerous weapon is erroneous. However, I have held that the dangerous quality of an object may be inferred from its potentiality to cause injury when used in an assault and battery. Decision on Appeal No. 1892, affirmed by NTSB Order EM-29. Here it is clear that not only did the broken plate have the potential to

cause injury, it did result in injury.

It is very clear that Appellant was provoked by the extremely abusive language used by Harrison. Although I have held, without exception, that "the only real provocation which justifies the use of force is an actual attack leaving the victim with no means of defense except the use of force" (Decision on Appeal No. 1975), I have taken mitigating circumstances into account in my consideration of a prayer for relief. Accordingly, in consideration of Appellant's previously unblemished record, his family situation, and the facts surrounding the incident, an order or revocation would seem to be punitive rather than remedial, as in the proper nature of this proceeding. Therefore, the order will be modified.

ORDER

The order of the Administrative Law Judge dated at Port Arthur, Texas, on 1 August 1978, is MODIFIED to provide for a suspension of twelve months, and as MODIFIED is AFFIRMED.

R.H. SCARBOROUGH
VICE ADMIRAL, U. S. COAST GUARD
ACTING COMMANDANT

Signed at Washington, D.C., this 26th day of March 1980.

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